



Federal Communications Commission
Washington, D.C. 20554

MAR 13 1998

Carol L. Deibel
Director of Planning
Departments of Planning and Public Works
705 Churchville Road
Bel Air, Maryland 21014

Dear Ms. Deibel:

Thank you for your letter, which was forwarded to us from the office of Senator Barbara A. Mikulski, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in your community. Your letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten
Acting Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Copy to: The Honorable Barbara Mikulski

BARBARA A. MIKULSKI
MARYLAND

COMMITTEES:

APPROPRIATIONS

LABOR AND HUMAN RESOURCES

United States Senate

WASHINGTON, DC 20510-2003

February 4, 1998

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Ms. Karen Kornbluh
Acting Director, Legislative Affairs
Federal Communications Commission
1919 M Street, NW, Room 808
Washington, D.C. 20554-0002

Dear Ms. Kornbluh:

I am writing to request your consideration of the attached correspondence from my constituent, Carol L. Deibel. Please respond directly to Ms. Deibel and send a copy to Demaune Millard of my staff. If you have any questions, please call Mr. Millard at (202) 224-4654.

Thank you for your assistance.

Sincerely,



Barbara A. Mikulski
United States Senator

SAM:cam
Enclosure

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The Honorable Barbara Mikulski
410 East Pratt Street Suite 253
Baltimore, Maryland 21202

Dear Senator Mikulski:

I am writing you about the Federal Communications Commission and its attempts to preempt local zoning for cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular decision zoning decision in the U.S. which it

finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and does not even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. If its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property value and aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC claims immediate changes are needed to allow TV stations to switch to High Definition Television. The FCC's proposed rule on radio and TV towers is also objectionable. It sets an artificial time limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality does not act within this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not the local courts.

UNPPOSE any effort to

The FCC is a single purpose agency, with no zoning expertise. Please stop the FCC's intrusion on local zoning authority and oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission".

Very truly yours,


Carol L. Deibel

Director of Planning